

**From:** Lawrence F Povirk  
**To:** Microsoft ATR  
**Date:** 1/25/02 2:24pm  
**Subject:** Microsoft settlement

8127 Brown Road  
Richmond, VA 23235  
January 25, 2002

To the United States Department of Justice:

Like many investors, I own, through various mutual funds, thousands of dollars worth of Microsoft (MS) stock. Yet, lately I find myself wishing MS would simply close down and vanish. Why? Because I am also a computer user. I spend at least half my working hours at the computer, and like most users, I have dealt with MS products for years. The quality of those products has been variable, but that has been true of most software, so I could not complain too loudly. If I found one of their products genuinely dysfunctional, I could dump it and choose a competing product, as I did several times. Lately, however, I feel I am being increasingly coerced into using MS products, as the alternatives have gradually disappeared. As anyone familiar with the industry knows, this is not because MS has come up with more innovative or more reliable software. Rather, it is because they have been able to target any popular piece of software they choose, use the cash flow from Windows to build a functional duplicate of it from the ground up, bundle their copycat version with Windows or sell it below cost, and drive their competitor out of business. This is classic, textbook monopolist behavior, and it is beginning to stifle the whole computer industry.

We need not belabor whether MS acted improperly. Their culpability has already been established. What is at issue is coming up with an effective remedy, that will restore some degree of consumer choice. It is not only companies harmed by MS's behavior, or consumers frustrated by their lack of choice, but disinterested industry analysts as well, who all agree that the settlement now proposed will do almost nothing to alter MS's mode of business or to bring competition back to the software market. There are, however, remedies that might actually make some progress toward that end.

First and foremost, no one should have to pay for a MS product that they do not want. I recently began shopping for a notebook computer, and found it was virtually impossible to buy one from a major manufacturer that was not preloaded with Windows. IBM and Dell both used to offer models with Linux instead, but no longer. Tellingly, both manufacturers took them off the market just when the Justice Department gave up its only real leverage in the antitrust case by removing the threat of a MS breakup.

This coercion of consumers to buy a product they do not want (Windows) in order to get one that they do want (a computer) is precisely what the antitrust laws were intended to prevent. Hence, at a bare minimum, a simple mechanism should be set up such that anyone can get a full refund for any piece of MS software that was bundled with any piece of hardware that they purchased. To circumvent MS's considerable skills in price manipulation, amount of the refund should be set at the greater of the amount the manufacturer paid MS for the software, or a fixed fraction, say 70%, of the retail price of the software. Moreover, the price charged by MS to manufacturers for preloaded software should be required to be published and uniform, so that MS cannot reward manufacturers for promoting MS's interests, or, more importantly, punish them for not doing so. If a consumer wants to return only part of an "integrated" piece of software say, keep Windows but get rid of Internet Explorer, they also should be able to do so, and get a partial refund based on the approximate size of that part of the software (i.e., number of lines of computer code) relative to the whole. Obviously, MS itself cannot be trusted to handle the refund process itself; that will have to be done by an independent entity set up specifically for that purpose, and under court oversight. In the past, MS has argued that, were this to be allowed, users would return the software, and keep using it anyway, or use an illegal copy. But with MS's new authentication/registration requirements, this practice will become impossible, and their argument will become moot - the one small benefit of an otherwise reprehensible policy that may soon widen the "digital divide" into a chasm.

Second, to help level the field in application software, MS should be required to publish the specifications of its main file formats such as .doc, .ppt and .xls. Currently, I am often forced to use MS Word, a program I passionately hate, because coworkers send me documents in MS Word (.doc) format. While competing word processors have devoted considerable effort to creating filters to import and export .doc files, those filters not very reliable, partly if not primarily because the .doc format is secret and ever-changing. Publishing the specifications would probably not solve all interconversion problems, but it certainly would help. Furthermore, MS should be required to maintain input filters of their own for the next three competing applications (e.g., WordPerfect, StarOffice and Applixware word processors), so that documents created on those applications will open in Word, Powerpoint and Excel. Again, and unfortunately, an independent entity will have to be set up to monitor compliance.

Even so, none of this even begins to address what may be a much greater means of coercion in the future: MS's apparent plans to make it more and more inconvenient for any Windows user to use any internet services that compete with their own MSN and Passport services. We are now getting only the first hints to what those tactics will be, but they are clearly going to be inextricably built into Windows, and virtually

impossible for any Windows user to avoid. Given their control of so much of the basic operation of home and office computers, they really should be barred from providing network services at all. Given that such a restriction is unlikely, their behavior in this area will have to be closely monitored as well, to ensure that they do not shut out competitors entirely.

Of course, I realize that there are those who are perfectly satisfied with the closed, controlled world of computing provided to them by Microsoft. But 20 years ago, there were those who were equally satisfied with AT&T's monopoly phone service, and were dumbfounded at the government's effort to break it up. There were even those who were satisfied with the state-controlled monopolies of the Communist era. That doesn't mean they should have been preserved. History has taught us over and over again that monopolies are a stagnating, corrosive influence on any industry they control, whether it's oil or software. In every case where they were broken up, the result was a wave of innovation and expansion, often going beyond the dreams of even the most enthusiastic trust-busters. I would challenge you to name a single case where the forced restoration of competition in an industry, resulted in worse products being available to consumers. Despite their stability and economies of scale, monopolies are, invariably, a bad deal for consumers, entrepreneurs and society at large; a bad deal for everyone but the monopolists themselves. Microsoft is no different.

A copy of this comment in PDF format with facsimile signature, is attached.

Sincerely,  
Lawrence F. Povirk